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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,600	12/29/2000	Samuel N. Zellner	BELL-0038/99164	1291

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EXAMINER

TAYLOR, BARRY W

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 02/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/752,600

Applicant(s)

ZELLNER ET AL.

Examiner

Barry W Taylor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muntz et al (5,896,427 hereinafter Muntz) in view of Khasnabish (6,411,679).

Regarding claims 1, 13 and 23. Muntz teaches a system and method for maintaining network synchronization by using time stamps (entire disclosure) comprising:

transmitting a first signal from a first point to a second point of the communication network, wherein the first and second points are remotely located (see figure 3 wherein

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SOURCE CPE (i.e. first point) transmits a first signal to DEST CPE (i.e. second point) of communication network 300);

recording a first time value of the SOURCE CPE using a first clock (col. 1 line 35 – col. 5 line 45, col. 6 lines 20-67);

receiving a second signal at the DESTINATION CPE (col. 1 line 35 – col. 5 line 45, col. 6 lines 20-67, col. 7 line 1 – col. 13 line 17); and

recording a second time value of the receiving using a second clock (columns 1-4, col. 6 lines 45-48, col. 6 line 63 – col. 7 line 19, col. 7 line 20 – col. 13 line 17)

wherein the first and second clocks operate from a substantially similar reference (col. 1 line 35 – col. 5 line 45, col. 6 lines 45-48).

Muntz does not explicitly show testing a communication network.

Khasnabish teaches an apparatus and method for call progress timing measurement in IP telephony (Title, abstract) wherein a first device sends a signal to a second device (abstract) and monitoring for a response from the device and calculating an elapsed time between sending the signal and a receipt response (columns 1-2).

Khasnabish teaches that both voice and non-voice signals are sent over the network via TESTER 105 figure 1 wherein TESTER is microprocessor based and preferably makes use of a multi-tasking operating system since the TESTER needs to be able to launch, control, and store information about multiple simultaneous telephone test calls (columns 2-4). Khasnabish discloses that TESTER can make calls over PSTN or INTERNET (columns 4-6).

It would have been obvious for any one of ordinary skill in the art at the time the invention was made to modify the invention as taught by Muntz to use the TESTER as taught by Khasnabish so that call progress through the network may be monitored to determine whether or not the system under test is operating properly as taught by Khasnabish.

Regarding claim 2. Muntz teaches comparing first and second signal as a function of first and second time values (col. 4 line 15 – col. 5 line 67, col. 6 line 20 col. 7 line 20).

Regarding claims 3-4. Muntz does not explicitly show testing a communication network.

Khasnabish teaches an apparatus and method for call progress timing measurement in IP telephony (Title, abstract) wherein a first device sends a signal to a second device (abstract) and monitoring for a response from the device and calculating an elapsed time between sending the signal and a receipt response (columns 1-2). Khasnabish teaches that both voice and non-voice signals are sent over the network via TESTER 105 figure 1 wherein TESTER is microprocessor based and preferably makes use of a multi-tasking operating system since the TESTER needs to be able to launch, control, and store information about multiple simultaneous telephone test calls (columns 2-4). Khasnabish discloses that TESTER can make calls over PSTN or INTERNET (columns 4-6).

It would have been obvious for any one of ordinary skill in the art at the time the invention was made to modify the invention as taught by Muntz to use the TESTER as

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taught by Khasnabish so that call progress through the network may be monitored to determine whether or not the system under test is operating properly as taught by Khasnabish.

Regarding claims 5 and 16. Muntz teaches using Stratum clock (col. 3 lines 24-25).

Regarding claims 6 and 14. Muntz teaches further comprising providing the reference signal to the first and second clocks (columns 1-5, col. 6 line 20 – col. 7 line 43).

Regarding claims 7-8 and 17-18. Muntz teaches SOURCE CPE and DESTINATION CPE see figure 3.

Regarding claims 9-10 and 19-20. Muntz teaches source and destination nodes may be located in different countries (col. 3 line 30). Khasnabish also teaches IP telephony.

Regarding claim 11. Muntz teaches that separate clocks may be used (col. 1 line 35 – col. 4 line 14, col. 4 line 15 – col. 5 line 67, col. 6 line 20 col. 7 line 20).

Regarding claims 12 and 15. Muntz does not show using a satellite. However, Muntz discloses that the source and destination CPEs may be located in different countries and would only make sense to use well know satellite techniques for system reference signal.

Regarding claims 21-22. Muntz teaches the wherein the first clock maybe located in one country and the second clock located in another country (see "BACKGROUND OF THE INVENTION" starting on column 1 line 35 and continuing to

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column 4. Furthermore, Applicant's also disclose that it is well known to those skilled in the art to use Stratum clocks (see specification page 9 line 1).

Regarding claims 24. Muntz teaches the wherein the first clock located with the signal generator (col. 3 line 6 – col. 4 line 2, Furthermore, Applicant's also disclose that it is well known to those skilled in the art to use Stratum clocks--see specification page 9 line 1.

Regarding claim 25. Muntz teaches the second clock is located with the signal receiver (col. 3 line 67 – col. 4 line 15, col. 4 line 26-67).

Response to Arguments

2. Applicant's arguments filed 11/25/02 have been fully considered but they are not persuasive.

a) Regarding Applicant's general remark starting on page 3 and continuing to page 4 wherein Applicant's attack references separately even though the Examiner rejection was based upon Muntz in view of Khasnabish. For example, Applicant's argue (first full paragraph) page 4 that Khasnabish does not teach or suggest providing network testing based on separate clocks.

First of all, Muntz is very clear in that the invention is directed towards a network node that maintains network "**SYNCHRONIZATION**" utilizing digital phase comparison techniques, which alone reads on Applicant's general claim language. Muntz also discloses various clock recovery **techniques to maintain** network synchronization of constant bit rate service traffic which not only reads on Applicant's general claim language but one of minimum skill in the art would readily recognize that some sort of

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"testing" would be required to ensure that data would not be lost. Furthermore, Muntz indeed teaches that first and second clocks maybe used. Applicants have already admitted that "Stratum clocks" are devices well known in the art to provide highly accurate timing (see specification page 9 line 1). Therefore, one of minimum skill in the art at the time of the invention would only have to view Muntz column 3 to find that first and second clocks (i.e. separate clocks) operating from substantially similar reference (i.e. stratum reference column 3). Muntz does not explicitly show testing a communication network.

Khasnabish teaches an apparatus and method for call progress timing measurement in IP telephony (Title, abstract) wherein a first device sends a signal to a second device (abstract) and monitoring for a response from the device and calculating an elapsed time between sending the signal and a receipt response (columns 1-2). Khasnabish teaches that both voice and non-voice signals are sent over the network via TESTER 105 figure 1 wherein TESTER is microprocessor based and preferably makes use of a multi-tasking operating system since the TESTER needs to be able to launch, control, and store information about multiple simultaneous telephone test calls (columns 2-4). Khasnabish discloses that TESTER can make calls over PSTN or INTERNET (columns 4-6).

It would have been obvious for any one of ordinary skill in the art at the time the invention was made to modify the invention as taught by Muntz to use the TESTER as taught by Khasnabish so that call progress through the network may be monitored to

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determine whether or not the system under test is operating properly as taught by Khasnabish.

b) Regarding Applicant's remark on page 5 wherein Applicant's argue that the office action failed to establish a *prima facie* case of obviousness, **without the benefit of [applicant's] specification.**

One of ordinary skill in the art would not have to use Applicant's invention for obviousness. Muntz indeed teaches that first and second clocks maybe used. Applicants have already admitted that "Stratum clocks" are devices well known in the art to provide highly accurate timing (see specification page 9 line 1). Therefore, one of minimum skill in the art at the time of the invention would only have to view Muntz column 3 to find that first and second clocks (i.e. separate clocks) operating from substantially similar reference (i.e. stratum reference column 3). Muntz does not explicitly show testing a communication network.

However, Muntz invention is directed towards voice and data (i.e. non-voice). Again, one of minimum skill in the art at the time the invention would not have to use Applicant's specification but instead realize that **Khasnabish teaches that both voice and non-voice signals** are sent over the network via TESTER 105 figure 1 wherein TESTER is microprocessor based and preferably makes use of a multi-tasking operating system since the TESTER needs to be able to launch, control, and store information about multiple simultaneous telephone test calls (columns 2-4). Khasnabish discloses that TESTER can make calls over PSTN or INTERNET (columns 4-6).

It would have been obvious for any one of ordinary skill in the art at the time the invention was made to modify the invention as taught by Muntz to use the TESTER as taught by Khasnabish so that call progress through the network may be monitored to determine whether or not the system under test is operating properly as taught by Khasnabish.

Conclusion

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


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---(6,091,802) Smith et al is considered pertinent for a telecommunication system tester (see all).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor whose telephone number is (703) 305-4811. The examiner can normally be reached on Monday-Friday from 6:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone number for this Group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 customer service Office whose telephone number is (703) 306-0377.


CURTIS KUNTZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600